

UNIFORM LAW CONFERENCE OF CANADA
CIVIL LAW SECTION

UNIFORM INTERPRETATION ACT

INTERIM REPORT OF THE WORKING GROUP

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Victoria, British Columbia
August 2013

Background

[1] The ULCC was approached a number of years ago by the Federal Government to consider undertaking a review and renewal of the Uniform Interpretation Act and other related acts given the recent developments in the law in Canada and in other Commonwealth countries. The current Uniform Interpretation Act dates back to 1984. The first Uniform Interpretation Act was adopted in 1938. There were subsequent revisions in 1941, 1953 and 1973. The 1984 Uniform Act was in both English and French.

Scope of Review

[2] The scope of the Project is broader than just reviewing the Uniform Interpretation Act. It was decided to follow Ontario's approach which was to enact a comprehensive "Legislation Act". Ontario's legislation is the most recent legislation in Canada dealing with an "Interpretation Act" (2006).

Working Group

[3] The Working Group comprised of Peter Pagano (chair), Dawn Leroy (BC), Sandra Petersson and Shannon Brochu (Alberta Law Reform Institute), Andrea Mackowetzky and Julie Alton (AB), Ian Brown and Jane Chapco (Saskatchewan), Tamara Kuzyk and John Gregory (Ontario), Elizabeth Strange and Michael Hall (New Brunswick), Jean-Paul Chapdelaine (Federal Government) and Edgar Schmidt. Myriam Anctil (Quebec) will be participating in the Group for the next steps of the Project.

[4] The Working Group began meeting, through conference calls, in the Spring of 2012. Meetings were held monthly, for about an hour. It was agreed that Ontario's *Legislation Act, 2006* would be used as a starting point for the review. Ontario's Legislation Act includes the following components:

Provisions relating to the interpretation of legislation (commonly found in an "Interpretation Act")

Provisions relating to the filing and publishing of regulations (commonly found in a Regulations Act)

Provisions relating to the consolidation and revision of statutes and regulations (Commonly found in Revision Acts)

Provisions relating to Ontario's e-Laws (official version of the laws in electronic format)

[5] The Working Group decided that the Project would be divided into at least 2 phases, starting with provisions relating to the interpretation of legislation and then followed by the components referred to above. The reason to divide the Project into phases was two- fold:

- 1) Not all jurisdictions may be interested in a "Legislation Act", but may wish to enact only the Interpretation Act provisions or the Regulations Act provisions;

- 2) It made the Project more manageable

Methodology

Step 1

Comparison chart

- [6] A table was prepared comparing the Uniform Interpretation Act, Uniform Regulations Act, the Interpretation Act, Regulations Act and Statute Revision Act of each Canadian jurisdiction (Federal, Provincial, Territorial) and of certain Commonwealth Jurisdictions (UK, Australia and New Zealand) against Ontario's Legislation Act.

Step 2

Interpretation Act provisions

- [7] For the purpose of Phase one of the Project, provisions relating to the interpretation of legislation contained in Ontario's legislation were identified.
- [8] Also, provisions from the Uniform Interpretation Act and the other jurisdiction's Interpretation Acts that weren't included in the Ontario Act were identified.

Step 3

Analyses and recommendations

It must be noted that while most jurisdictions had similar provisions they were not all identical. In some cases the wording was similar and in others the approach taken to deal with the subject-matter was different.

- [9] An analysis of each provision identified in Step 2 was undertaken. Each of the Group members was assigned a number of provisions to analyze.
- [10] The analysis consisted of comparing the identified provision with the similar provisions of other jurisdictions in order to indentify any differences. For example, was the policy intent the same and if not how did it differ, was the provision written more clearly, was different terminology used, etc. While some of the provisions missing in the Ontario Act which other jurisdictions had were discussed during our analyses, they weren't assigned and analyzed to the same extent. *(These will be reviewed and analyzed more extensively).*
- [11] A recommendation was then made with respect to each provision analyzed. For example, should the Ontario provision be adopted or that of another jurisdiction's, should the wording and sentence structure be followed or could it be improved, are there any gaps or other issues, etc.

Step 4

Review the analyses and recommendations

- [12] The Group then reviewed the analyses and recommendations prepared in Step 3 with respect to each identified provision. The results of the review in this step form the basis for the instructions to the drafter.
- [13] The review of the analyses and recommendations was quite time consuming. Starting in November 2012, the meeting schedule was increased to a 90 minute meeting, every 2 weeks. The review was completed around the end of April; however there were some recommendations where a consensus could not be arrived at so the matter was “parked”. These parked items will be looked at again in the drafting stage.
- [14] Without getting into specifics, in many cases the recommendation (sometimes with some modification) was approved by the Group. There were occasions where the Group felt that an option should be provided. There were also cases where it was determined that the identified provision was not appropriate for an Interpretation Act although it likely could be included in some other part of the “Legislation Act”.
- [15] Obviously the Group wanted to agree to the best policy and best legislative approach, but the Group couldn’t help but consider the effect a change in the interpretation rule might have on a jurisdiction. Most jurisdictions have been using the same Interpretation Act for decades. Legislation has been drafted taking into account their Interpretation Acts. Would a new approach to an interpretation rule inadvertently change the law of that jurisdiction since generally speaking an Interpretation Act applies to laws enacted before or after the Interpretation Act? While it is possible to deal with some of these issues with transitional provisions, the Group wants to avoid there being, in effect, 2 Interpretation Acts. Ideally any transitional provision would have to be for a short duration.

Step 5

Next steps

Drafting

- [16] Currently, a draft is being prepared based on the results of the review of the recommendations. There is no doubt that during the drafting process some of our earlier decisions will be revisited.

Consultation with Legislative Counsel Offices

- [17] Before a final draft is completed there will be consultation with the other Legislative Counsel offices.